SPEECH

OF

HON. HENRY W. DAVIS,

OF MARYLAND,

IN THE

HOUSE OF REPRESENTATIVES,

MAY 15, 1856,

ON THE BILL DEFINING THE DUTIES OF COMMISSIONERS OF ELECTIONS IN THE CITY OF WASHINGTON, AND FOR OTHER PURPOSES.

WASHINGTON:
AMERICAN ORGAN, PRINT
1856.

ELECTION LAW FOR WASHINGTON CITY.

Mr. DAVIS, of Maryland. The existing Administration seems to have degenerated into a superintendent of municipal elections. For about one month we have had, time and again, objection to every attempt to consider business out of the regular parliamentary order by the resistance of that stern Democrat, my friend from Tennessee, [Mr. JONES.] It is to be supposed, of course, that that gentleman must have had some very grave reasons to induce him to do violence to the courtesy of his own nature—that some great object must have induced his stern refusal of his ordinary courtesy so repeatedly to gentlemen who have sought it.

I desire to inquire what has occasioned this course? and perhaps in that pursuit we may find why it is that so much importance is attached to this bill regarding the municipal elections of the city of Washington.

It has been repeatedly said in this House, that the Corporation authorities—that some of the parties are in favor of, not some bill—but of some amendation of the existing law—but of *this bill* now under consideration. I say, sir, that we have no expression on the part of any corporate authorities in favor of the passage of *this bill*; but, on the contrary, I have in my hand—which I shall, before I finish my remarks, send up to the Clerk to have read—a remonstrance on the part of those authorities, against the passage of any such law.

If, therefore, there be no application for the passage of this law, we are relieved from the necessity of considering the weight we ought to attribute to the application of parties who are to be governed by the law; and we are at liberty to ask the question whether there is any existing evil which this bill remedies, or any more good which this bill accomplishes, which ought to induce us to change the existing law, passed in 1848, and which, down to this time, no great body of the men of the city of Washington have found to interfere with their civil, political, or religious rights. If there be no other object to be accomplished by it, we may be led to surmise that there is a political purpose—that it is to break or bend the independence of the judicial opinion of the Commissioners of Election into conformity to an interpretation of the existing law which, in their opinion, it will not bear, and which it has been attempted to enact here by the first section of the original bill, now stricken out and abandoned.

Where did this bill come from? It is said that it was recommended by certain officials to a committee of the Senate. But, whosoever recommended it, in its origin it came from the Senate committee. As it came from the committee, it proposes a radical alteration in the suffrage law, and in defining the qualification of voters. It was not, as the honorable gentleman from Vermont supposes, because we objected to the general form of that section, but because we desired to insert an additional clause, that the only controversy which has arisen in this House did arise. No man objected to the change proposed touching the registration. We were earnestly in its favor. That, therefore, was not the reason for striking out the first clause. It is possible that it was dropped because they found that they could not pass it in the shape they desired.

The penalties would incorporate the extra-judicial interpretation of the existing law in that law; the penalties, therefore, were allowed to supply the place of the existing section.

We have had some discussion [illegible] what is the interpretation of the word *resident*. I desire to lay that law distinctly before the House. The existing law provides:

"That every free white male citizen who shall have resided one year previously, and who shall have been rated and paid a tax assessed on the list of December for the year previous, shall vote at the June election."

The first difference between the court and the judges of election is as to the meaning of the words "free white male citizen" in connexion with the residence. The commissioners of election decided that the *residence* was required of a person having the quality of *citizen*. He is not described, as most of our constitutions describe him, as a *resident*—as a white *person*—but as a free white male *citizen*, having resided, &c. The commissioners followed a rigid rule of grammatical construction, when they said, that a person must have resided here, being a citizen, for one year previous to the election.

The circuit court of the District of Columbia informally, extra-judicially, without having before them any case which entitled them to pass *judgment* upon that point, intimated a different opinion. It was a question not submitted to their judicial cognizance. It *was* a question directly submitted to the persons appointed as judges of the election. They are sworn, by the existing law of the District, to admit the vote of every person who, according to the best of their judgment and

understanding, is entitled to vote. The court decided that they could not issue a mandamus to the judges of election. "They are the parties to be controlled, but this court cannot operate upon them by mandamus. They are quasi *judges, and are sworn to decide the qualifications of voters, according to their judgment and belief.*" It is, therefore, left to them to pass judicially upon the question, and not to the [illegible] court; and the court has disclaimed, under the existing law, the right to control them. But they have intimated that they think there is some [illegible] that [illegible] the judges of election [illegible] still, sir, that [illegible] not, according to the existing law, [illegible] which is [illegible] to pass upon that question. [illegible]

[illegible]

to have been admitted or ought to have been excluded, a penal offence, without reference to the question whether the commissioner did or did not think the party who offered to vote really entitled to vote—to punish a judicial officer because he knew certain facts and drew a legal conclusion from them different from that drawn by another judicial officer—is at variance with every principle of law or justice.

I say, sir, there is no such principle to be found in the laws of Virginia, in the laws of Maryland, in those laws from which the laws of the District are made up, which are in accordance with the feelings of the people of this part of the country, and which [illegible] to be considered by Congress [illegible]

[illegible]

the bill is unfit to pass. It is not the habit of this part of the country to appoint judicial officers, and then hold them to the performance of their duties by penalties. We appoint men who are to be controlled by their conscience, their judgment, and their oath. And if gentlemen seek now to change this law, which has rested here unchanged for many years—so far as this point is concerned, from 1820 down—let them say that any commissioner of election has, in this District, corruptly, wilfully, and intentionally, deprived any one man of a right to vote after knowing that he was entitled to vote, and then they will have found what has not hitherto been found—a pretext for this slur, this insult, this stigma, cast upon the judges of the last election. Sir, the great crime of that election was, that the Administration were prostrated in the dust under it. Sir, this measure is a fling of a vanquished party against the characters of the victors—it is a poisoned Parthian arrow shot by the flying foe, whose scratch will be deadly, and may avenge the defeat it could not avert.

Then, after the government required its official menials to vote after they were driven to the polls, required them to vote an open ticket, subject to official overseers stationed to spy them out; after the control of all the foreign votes was bought, and every stone-cutter who refused to support the government was hunted out and marked, and driven from the city by depriving him of his employment; after all these acts had proved unequal to the task of repressing the spirit of the American people here, they ask now to be allowed—through the instrumentality of the tribunal where the President has the appointment of the marshal, where the marshal has the appointment of the jury, where the jury are the judges of the evidence, where the passions of political strife are to be the scales which weigh that evidence—to revolutionize the city, by indirectly revolutionizing the law through the fears of the persons appointed to execute, not according to the dictates of their fears, but of their judgments; and all that, in order that you may reverse a decision of the people, where it was made fairly and without any imputation on the regularity of the election, or the honesty of any one of the commissioners. If this is the bill that gentlemen of the Democratic party want to pass, let them pass it.

Well, sir, there is another thing growing out of it—The law of this city is as distinct as a law can well be. It says that the tax-books, the poll-books, containing the names of the voters registered prior to the 31st of December, shall not be changed. Yet, sir, the same court, in the same proceeding in which they refused a mandamus because of the judicial character of the judges, took occasion to give utterance to the opinion that a party, otherwise qualified to vote, should be registered and allowed to vote, notwithstanding the fact that his name was not recorded upon the register prior to the 31st of December. Yet, sir, with that decision staring them in the face, contrary as it is to the express letter of the written law, of which there can be no reasonable doubt, the honorable gentlemen who desire to press this bill through the House will place the commissioners of elections in the hands of the courts. When they refuse (as under their oaths they are bound to refuse) to admit to registry any man whose name was not placed there prior to the 31st of December, no matter what the cause of the omission, these commissioners are subjected to all the penalties of the bill, at the pleasure of any jury the marshal may summon, which shall see fit to believe, in a political cause, any evidence, no matter how vile, swearing that the party excluded was omitted from the register by accident or design.

It is understood that there are not a few expectants of this pressing behind, whose names are not upon the poll-books, who are awaiting the passage of this bill, in the hope that, with the penalties contained in the bill hanging over the heads of the commissioners, they will not dare to refuse to admit these parties to registry.

Now, sir, I will not do the injustice to the other side of the House to suppose that they have been aware of the evils which I have pointed out. They are honorable and high-minded gentlemen: and I have the confidence to believe that they would not knowingly perpetrate such an outrage upon their fellow-citizens of this city. I have more confidence in the high bearing and manliness of gentlemen upon the other side of the House. But, sir, they have rushed so headlong in pursuit of their object, by this measure, that I feel bound to call attention to the carelessness with which they inflict penalties, which, when inflicted, they would be the first to deplore.

They have made the effort, over and over again, to pass this bill without discussion; to *jam* it through under the operation of the previous question. They have refused to allow the bill to be amended. They have refused to refer it to committee, where it may be fully and fairly discussed.

I am ready to pass such a bill as the Committee of the city have asked for. They have asked for three more election precincts and more time to be granted. I am ready to pass such a bill. But I am not ready to pass a bill, with or without discussion, which shall establish a principle unknown to our laws—the principle of imposing penalties on our judicial officers, to declare them guilty in the administration of their official duties, and call in a new tribunal to punish them for failing to execute a law as a court may construe it; thus leaving the question on which judges and eminent lawyers differ. The honorable gentleman from Virginia [Mr. Hunton] has stated that two judges in Virginia, (Mr. Patton and the present Attorney General of that State,) agree in the opinion that a foreigner is entitled to vote the moment he is naturalized. Sir, I will suggest to the honorable gentleman from Virginia that lawyers do not all agree with the authorities he has cited. In the late convention in Virginia, to which he alluded, one of the ablest lawyers and jurists in the State of Virginia, (Mr. Scott, of Fauquier,) expressed an opinion adverse to the one he has expressed, and adverse to the opinion of Mr. Patton, and to the decision given here by the court. Yet, sir, gentlemen propose to place the commissioners of the elections, blindfold, under heavy personal penalties to execute a law in the construction of which judges and lawyers differ!

There is no doubt that this bill derives its peculiar force from its connection with the existing law on the statute-book. If taken independently, it is

only an insult—nothing more, and nothing less. But when taken in connection with the existing law, and its extrajudicial effect, and exposition by the courts, its effect is to enact, and enforce by pains and penalties, a law which the friends of the bill know they cannot exact directly.

As stated by the gentleman from Kentucky, the existing law does discriminate harshly between the foreigner who receives his naturalization papers the day before the election, and the young American who comes of age after the 31st of December preceding the election. Every person who is a citizen *of Washington*, that is, a *resident*—a person who has his *domicile* here, whether foreigner or native born, whether a citizen or not a citizen of the United States—is, according to the laws of the Corporation, required to be assessed and required to be taxed. It is the express judgment of the court, in the opinion to which I have already referred, that persons not citizens of the United States are liable to be taxed, and persons not citizens are entitled to have their names put down on the poll-books; and when foreigners so entered upon the books receive their naturalization papers the day before the election, they are entitled to vote.

Mr. JONES, of Tennessee. The act of 1848, "to continue, alter, and amend, the charter of the city of Washington," provides that said Corporation shall have power to lay and collect a school tax on every free male citizen of the age of twenty-one years, of one dollar per annum.

Mr. DAVIS. I am aware of that; but it was not the law to which I referred.

Mr. JONES. That act gives the Corporation the authority to lay the school-tax.

Mr. DAVIS. I am aware of that. There is likewise a general authority to tax every inhabitant; but that is not the question. I desire to meet the honorable gentleman on *the* law that he has quoted. Citizen of what? If citizen of the United States, then the honorable gentleman is right. If citizen of Washington, then the court is right. The gentleman will abide by the judgment of the court, over to which he wishes to turn the commissioners.

Mr. JONES. I say that if the court decide that under the law the city [illegible] of Washington have power to tax, [illegible] naturalized [illegible] though he [illegible] three [illegible] years [illegible] decision.

Mr. DAVIS. I have no [illegible] my honorable friend's opinion. [illegible] to make the *opinion* of the court *the law*. [illegible] pains and penalties are [illegible] connected with the decision of the court. This bill is unmeaning to everybody, unless taken in connection with that decision. The decision of the court, however erroneous, *is*, for practical purposes, *the truth*. It is the thing which gives [illegible] to the gentleman's pains and penalties. [illegible] decision itself:

"*The Naturalization Question.*—The opinion of the court in this case was yesterday pronounced by Judge Dunlop, who recited the [illegible] of the controversy and reviewed the arguments adduced by counsel. He decided, firstly: that a residence as a citizen a year previous to the election had been intended to be required by the charter to qualify a person to vote, it would have been so expressed in that instrument; but that such a requirement would be the extension of the probationary residence of one desiring citizenship a year beyond the time called for by the law on the subject. It was held to be the true construction of the charter, that if the person is subject to the school tax and a resident, he has a right to vote.

"As to whether the petitioner was entitled to be enrolled by the assessors as liable to a school tax, that depends on the second section of the charter, which says that 'the said Corporation shall have power to lay and collect a school tax on every free white male citizen of the age of twenty-one years and upwards.' In the fifth section of the charter it is required to qualify a man to vote that he must be a free white male citizen *of the United States*; but in the second section (which gives the Corporation power to lay and collect a school tax) it is stated that he must be a free white male citizen, omitting the words 'of the United States.' A foreigner, without being a citizen of the United States, may be a citizen of Washington.

"In relation to the school tax, every child between five and sixteen years of age has a right of admission into the public schools, whether a child of an alien or naturalized citizen. The foreigner who resides in the city of Washington is subject to the school tax; and, as the petitioner admits that he was subject to the school tax on the 1st of December last, it was the duty of the assessors to register his name, which they have failed to do.

"In the case of U. S. Wallach last year before the court, it was held that where the party was entitled to be registered but the assessors had omitted his name, he should not be deprived of his right to vote on producing the proper proof to the commissioners of election. The mandamus now applied for is to compel the Register to enter the name of the applicant on the list; but the list having passed out of the hands of the Assessor, by whom it was made, is now in the hands of the commissioners of election. They are the parties to be compelled; but this court could not operate upon them by a mandamus. They are *quasi* judges, and are sworn to decide the qualification of voters according to their judgment and the law. Their duties are not ministerial.

"Judge Morsell spoke briefly, and only as to the want of jurisdiction of the court, on which point he fully concurred with the opinion expressed by Judge Dunlop."

Mr. JONES. It is an erroneous decision.

Mr. DAVIS. Erroneous it may be, but to be put in force.

Mr. JONES. I will, with the permission of the gentleman, state that the court which gives that opinion will have no jurisdiction of the case under this bill—the criminal, and not the circuit court, will have that jurisdiction.

Mr. DAVIS. And the gentleman wishes to legislate on the hopeful speculation of a difference of opinion between two co-ordinate tribunals in the same district, and with no better protection than *that doubt* against subjecting his fellow-citizens, for an error of judgment of law, to pains and

penalties, to jail and fine. It is a mockery of all law; and yet, for being a trifle more careful of the rights of our fellow-citizens, gentlemen are here now threatening us with scenes of bloodshed and murder, unless this law is passed. I am willing to enter [illegible] deliberately into the discussion of any bill [illegible] by my friends on the other side of the House. I have protested against this [illegible] of the House to force bills through [illegible] the pitfall into which [illegible] blindfolded, [illegible] political advantage [illegible] with their eyes open [illegible] jump in [illegible] I think—I honestly confess it—[illegible] know it involved all these consequences [illegible]

[illegible]

Mr. MILLSON. I wish to say that I would be as determined as the gentleman from Maryland in my opposition to any bill that would subject to penalties a judicial officer, or a *quasi* judicial officer, for any erroneous opinion he might express: and I [illegible] that the gentleman from [illegible] denunciations against [illegible] legislation, will favor the House, or [illegible] would be the [illegible] of the bill [illegible] if it pass, any of [illegible] would be subject to penalties [illegible] error.

[illegible] the first point upon [illegible] desire to repeat [illegible] "knowingly," accord- [illegible] knowing [illegible] a fact from which [illegible] and upon the facts [illegible] coordinate tribunal [illegible] divided; [illegible]

[illegible]

Department alluded to for his exertions in recommending these contributions. We confess that we see no grievous harm in all this matter. The administration of General Pierce is committed, in the most decided and open manner, to the principles which the fanatics of the Know-Nothing lodges are assailing. The success of these principles is important to the perpetuity of our institutions.—They are important to the honest administration of the government—they are important to the protection of the rights of the States, and of the rights of the citizens."

These words, I suppose, are to be interpreted the "Democratic party," and not "the people of the United States."

"They are important to the cause of law and order"—

my friends have taken under special guardianship the difficulties in Kentucky—

"and we do not see why gentlemen attached to such an administration should not contribute all *honorable* means"—

a singular combination of words—

"to counteract the violence of organized mobs in great cities"—

[illegible] the friends of my honorable friend near me [illegible] have made election after election [illegible] the scene of violence, denunciation, [illegible] and bloodshed. They were taught a lesson [illegible] which they are not likely to forget. They [illegible] hinted at bloody resolves, and now [illegible] invoke the same argument of fear in [illegible] bill; but though hundreds (it was boasted [illegible]) in Baltimore were armed—[illegible] United States dragoon pistols—[illegible] not venture to use them; and [illegible] hope that these heroes at [illegible] and the [illegible]

"whose [illegible] principles [illegible] contribution [illegible] votes, when [illegible] was intended [illegible] for such persons as [illegible] in the city, but legal [illegible] thousands [illegible] thousands of men [illegible]—men who toil for their living at hard labor [illegible] not only liberally of their money, out of their time, to assist the great cause of toleration and Democracy. There is scarcely a town or a township in this whole Union in which men are not to be found of this character. Nobody accuses them of corrupt purposes; and we cannot see why any such accusation should be regarded for a moment when *made against persons holding office under a straightforward and straightout Democratic administration.*"

This, sir, is eminently Democratic—conceived in the just spirit of that noble sentiment of a distinguished gentleman in another part of this Capitol, which regards adherence *to the party* as the exclusive test of character, and covering with its charitable mantle a multitude of sins! No wonder that the party is pure when the criterion of purity is *holding office under this straightout Democratic administration.*

"Those who *are not for us in this fight are against us. Men who doubt in times of trial like this should be made to give way.*"

Doubt is no part of the Democratic creed; and in *this fight doubt* is treason. Of what use is a man who doubts the fitness of governmental interference in elections, when those elections must be lost without it? Doubt implies a scruple about doing what is necessary; and a man who so doubts is damned for one of steadier nerves, and must be made to give way—

"to men who *do not doubt*, but who believe that the success of the Democratic party in the coming elections, as well of this year as 1856"—

ay, sir, they have been trembling with premonitory symptoms of the fall chills of 1856, for two seasons past; and it is much to be feared that the shaking they got last fall may serve them with renewed violence, and it may be a violence fatal to their valetudinarian power. We will prepare nodding plumes and solemn black for decent burial—*requiescat!*—

"who believe that the success of the Democratic party in the coming elections, as well of this year as of 1856, is [illegible] *to the preservation of the Union.*"

Indeed, sir, a singular combination of the bane [illegible] in 1856, and their conduct since [illegible], which alone has shaken it—[illegible] has disturbed it. It lay as peacefully, as quietly, as securely, in the affections of the people as an infant on its mother's breast, till they, at the instigation of an unholy ambition, poisoned their blood and inflamed [illegible]. It was they who made the [illegible] with their clank of the fire-bell, [illegible] the prophetic mind of Jefferson [illegible]. It was they who, without one [illegible], without any popular demand, without any [illegible], without the excuse of any [illegible], [illegible] for or pretended, [illegible] millions of the South [illegible] millions of the North [illegible] the slavery [illegible] the strife of fierce factions of which [illegible] most dangerous.

Saviours of the Union! They are the evil genii of the Union, who first stirred those subterranean fires whence came the earthquake which lately rocked it to its deep foundations.

To commit the Union to *them* for safe-keeping, is [illegible]!

But this precious collection of election moralities proceeds—

"We therefore heartily commend Mr. Washington"—

alas for that illustrious name in such a connexion!

"of the Treasury Department, for his activity and energy in the contribution alluded to, and we hope *the good example* may be followed throughout the Union."

That is the language of piety and good morals.

Sir, the laborer is worthy of his hire; and it does not lie in the mouth of the employer to plead the turpitude of the employment. Gratitude even, is not misplaced to one who has served them well in evil doing; but the public morals require that it should be explained that this "good example" is one only good to the men of this administration—abhorred of every other party in this country. It

is only good to that party which, after a career the least moderate, circumspect, and scrupulous, in the example it has set in its heyday of youth and power, has now, in its old age and decrepitude, become the special guardian of "principles of civil and religious liberty, so violently assailed by a secret political party known as the Know-Nothing party."

They piously and fitly quote Scripture to prove that whoever is not with them is against them.—Their first points of political morality are imbodied in *this good example;* and the honorable gentleman from Georgia, at an earlier period of the session, discoursed largely and eloquently of secret oaths, and forbidden pledges, and midnight conspiracies against religious and civil liberty of evil example.

I listened, sir, with great pleasure, but small edification, to that homily. Its only effect on my obdurate heart was, when I reflected on the recent history of the political party in whose behalf it was preached, to recall the closing scenes of Vanity Fair, with Becky Sharp bringing up behind the charity table.

PROSPECTUS OF THE AMERICAN ORGAN.

THE *American Organ* having been adopted, by the *Executive Committee* of the *American members of Congress*, as the *central organ* of the *American party*, the proprietor, with a view to its general and extensive circulation throughout the country, has determined, on consultation with his political friends, to furnish the same to subscribers, whose subscriptions are remitted *after May 1st, and during the months of May, June, and July*, on the following reduced terms, to wit:

Terms of the Daily American Organ.

Daily Organ, for one year - $3 00 | *Daily Organ* for six months $2 00

Terms of the Weekly American Organ.

Weekly Organ, for one year, to *single* subscribers - - - - - $1 50
Weekly Organ, for six months, to *single* subscribers - - - - - 1 00
Weekly Organ, for one year, to clubs of eight or more subscribers, each $1 25
Weekly Organ, for six months, to clubs of eight or more subscribers, each 75
Weekly Organ, for the campaign, to wit: from 1*st July* to 15*th November*, each 50

All subscribers whose subscriptions have been remitted during the month of May, have been charged only at above rates.